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SUBJECT: UNIVERSAL PERIODIC REVIEW: A NEW MECHANISM IN THE HUMAN RIGHTS TOOLBOX

REF: GENEVA 02373

Classified By: Ambassador Warren W. Tichenor. Reasons 1.4 (b/d).

¶1. (C) SUMMARY: A new human rights mechanism is scheduled to get underway in April 2008, with the human rights behavior of a first tranche of 16 countries to be reviewed under the Universal Periodic Review (UPR) process. Over the next four years, all UN member states are to undergo such review in the UN Human Rights Council in Geneva, with the U.S. slated to do so in 2010. The UPR mechanism is untested, and expectations vary widely about its potential. A number of Western and Latin American governments and NGOs, *inter alia*, hope it will prove at least a moderately successful tool to address countries' records and, perhaps, lead to improvements. Yet concerns run high that it could serve as an excuse to end country mandates and country-specific resolutions and to undercut human rights work in the General Assembly's Third Committee in New York. Although the Council has adopted UPR guidelines, many modalities remain unclear, and efforts continue to define those modalities in ways that could narrow the UPR's scope. While UPR is sure to evolve over time, the first tranche of reviews will set important precedents. While none of the countries with the most serious human rights problems is slated for review in 2008, we believe that, given the precedent-setting nature of the early sessions, it is not too early to begin considering whether and how to use the UPR to pursue USG human rights goals. END SUMMARY.

BACKGROUND

¶2. (SBU) The UPR was among the key innovations in the creation of the Human Rights Council, which formally replaced the Commission on Human Rights in 2006. By establishing a mechanism that regularly reviews all UN member states, UPR was posited as advancing the principles of universality and transparency. The UPR's basic mandate or blueprint was adopted at the June 2007 Council session, as part of the Council's overall institution-building process, and guidelines for preparing national reports were adopted at the

September 2007 session (reftel). The September session also featured a lottery that established the order in which countries are to be reviewed, covering all participating states over the next four years. Although Israel's selection for early review and the absence of any serious human rights violators among those in the first tranches for review raised questions about whether the selection process had been done fairly, the lottery appeared to have been conducted without manipulation. The Council is to review 16 countries three times a year using a four-year cycle. The first tranche of 16 countries is to be reviewed April 7-18, 2008, followed by a second group scheduled for May 5-16 and a third group December 1-12. The United States will be reviewed at the end of 2010. (Para 10 lists the order of reviews for 2008.)

UPR MODALITIES

¶3. (U) The process consists of six steps, although much remains to be worked out:

PREPARING DOCUMENTS: The initial stage involves preparing documents to form the basis for review. The country under review may (although it does not have to) prepare a national human rights report (20-page maximum). The Office of the High Commissioner for Human Rights (OHCHR) compiles a summary (10-page maximum) of information from treaty body reports, special procedures, and other official UN documents. OHCHR also prepares a summary (10-page maximum) of information from other stakeholders, including NGOs. These documents are to be finalized six weeks before the relevant UPR session for translation into all six official UN languages.

CHOOSING A "TROIKA": Lots are drawn among the 47 Council members to choose a "troika" of three rapporteurs to facilitate each country review, with a complicated formula involving regional group membership to encourage fair distribution of workload. The country under review may request the substitution of one of the troika member countries, and a country eligible to become a troika member may opt out of any troika. This could result in some Council members serving on several troikas while others serve on none. According to the guidelines, each troika, with OHCHR support, may prepare an issues paper or a list of questions to be given in advance to the country under review and be used during the UPR's interactive portion. A troika country has leeway in the person it chooses as its rapporteur, and could pick, for instance, a government official, its Geneva-based ambassador, or even an independent academic.

REVIEWING THE COUNTRY: A working group made up of the entire Council membership and facilitated by the troika conducts a three-hour review. After the country makes its presentation, Council members and observer states hold an interactive dialogue. NGOs cannot participate in the interactive dialogue but may observe the review session. Deliberations in Council working groups are not webcast like plenary sessions.

PREPARING A REPORT: Within "a reasonable time frame," the troika prepares a report summarizing the proceedings and any recommendations/conclusions and voluntary commitments. The country under review may discuss the draft, including commenting on the recommendations, with the troika before a final report is produced. The report should reflect the views of the country concerned as well as other views.

PRESENTING THE REPORT: The report or "final outcome" document is then presented during a one-hour segment of a regular Council session for formal adoption. The report could take many forms, from a pro forma summary of issues raised to a more detailed list of conclusions and recommendations, as is found in the reports of human rights treaty bodies. The report will have to distinguish between those recommendations that are "accepted" by the country under review and those that are not. The troika, concerned country, Council members and observer states as well as NGOs

may speak during this stage.

REVIEWING IMPLEMENTATION: The current mandate contemplates Council review of implementation, focusing on progress in fulfilling recommendations as well as other developments, but offers little detail. Some EU and Latin American Group (GRULAC) countries favor annual follow-up, while others say this should occur only every four years as part of the regular cycle. OHCHR is to create a voluntary fund to help less developed countries implement UPR recommendations.

DELAYS AND UNCERTAINTIES

¶4. (SBU) As the guidelines for national reports were undergoing the final stages of consideration at the September Council session, a number of countries sought to delay the start of the process from an original February 2008 start date on the grounds that this would allow insufficient preparation time for countries chosen for the first tranche. The EU and others were concerned that this was a ploy to stymie the UPR process. A deal was eventually struck to allow an April start date on condition that no country be allowed to delay its review. In response to less developed countries' complaints that they needed assistance to prepare for their reviews, the Council also adopted a resolution on the creation of an additional voluntary fund to assist in preparing a country's national report.

¶5. (SBU) More recently, on November 26, the African Group led a successful effort to postpone plans to select troikas for the first tranche of reviews. Proponents of a postponement argued that too many details of the troikas' responsibilities remained to be worked out, so that selecting troika members was premature; they also posited that troikas should limit themselves to examining the formal inputs from the government under review, rather than take the initiative to examine human rights issues on their own. An obviously peeved HRC President Doru Costea, supported by several Western Group and GRULAC delegations, urged that the postponement be as brief as possible and said that details of the troikas' duties could be worked out during the first set of reviews. Privately, they noted that the postponement aimed either to delay the start of UPR or to limit the ability of the troikas to address human rights problems seriously.

GETTING READY FOR THE UPR

¶6. (SBU) Of the 16 countries in the UPR's first tranche, representatives of several have told us that their governments have already begun planning for their national reports, with Brazil adding that it was treating UPR as a treaty body reporting exercise. Delegates of most other first-tranche countries expressed concern to us that their governments had yet to focus on taking the necessary steps, including broad national consultations, to prepare their national reports in the relatively short period before the mid-February due date and under an extremely tight Council schedule.

¶7. (SBU) Many NGOs have been enthusiastic about establishment of UPR, seeing it as an important new mechanism to highlight their concerns about countries' human rights records. Human Rights Watch (HRW) officials told us that large NGOs like theirs would be well placed to provide extensive input on countries, but that they were also working to inform smaller NGOs, including those focused on particular countries or issue areas, of the opportunity UPR presents.

¶8. (SBU) That said, many NGOs are now feeling pressed to provide input for the initial tranche. Several NGO representatives, including from HRW, Amnesty International, and the International Commission of Jurists, told us they were scrambling to put together and submit reports (five-page maximum) in time, adding that they would not submit reports on all countries under initial review and expected that

several countries per tranche would be without such input.

¶19. (SBU) The OHCHR is to have a major role in the UPR process, and it requested funding for 17 new staff positions to carry out its new responsibilities. Prospects for receiving such funding remain uncertain, and OHCHR has urged USG support for it, with Deputy High Commissioner Kang making that point most recently to the DCM in a meeting on other subjects. In the interim, the new three-person UPR Unit is pulling staff from elsewhere in OHCHR, although as Kang noted in a November 29 meeting with Western diplomats, this limits other important areas of OHCHR work and is unsustainable over the long term.

LISTING OF SCHEDULED REVIEWS IN 2008

¶10. (U) First UPR session (scheduled for April 7-18): Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, UK, India, Brazil, Philippines, Algeria, Poland, Netherlands, South Africa, Czech Republic, Argentina

Second UPR session (scheduled for May 5-16): Gabon, Ghana, Peru, Guatemala, Benin, Republic of Korea, Switzerland, Pakistan, Zambia, Japan, Ukraine, Sri Lanka, France, Tonga, Romania, Mali

Third UPR session (scheduled for December 1-12): Botswana,

Bahamas, Burundi, Luxembourg, Barbados, Montenegro, UAE, Israel, Liechtenstein, Serbia, Turkmenistan, Burkina Faso, Cape Verde, Colombia, Uzbekistan, Tuvalu

COMMENT

¶11. (C) No one is certain whether UPR will prove an effective mechanism. There are many details yet to be worked out for UPR's implementation, as well as numerous broader unanswered questions. UPR could prove harmful if it ends up diverting OHCHR resources that would otherwise be used effectively to conduct real human rights work, including fieldwork. It could also prove damaging if it becomes an excuse, as some countries already are trying to engineer, to eliminate country mandates, country-specific resolutions, or human rights work in Third Committee. Some countries, including those with poor human rights records, will no doubt seek to make UPR a formalistic and empty process that fails to address serious human rights concerns and that they can then trumpet as a stamp of approval. On the other hand, some governments and many NGOs are looking to use the process, including its interactive session, to air their concerns about major problems among serious human rights violators and use the process as a hook to publicize those concerns more broadly. A country's obvious attempts to stonewall or be otherwise uncooperative might even serve as the basis for a new country-specific resolution. At minimum, countries willing to improve their human rights record could benefit from a process that could spotlight problems, highlight best practices and form the basis for assistance in making improvements.

¶12. (C) Although many factors will bear on UPR's effectiveness, its initial sessions will surely be seen as setting precedents, even if informal ones. None of the countries with the worst human rights records is slated for review in 2008. Nonetheless, given the importance of those sessions as precedent-setters, they will warrant our close attention, and it is not too early to give thought to considering whether and how to use the UPR to advance USG human rights goals.